



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,201	03/28/2001	Paul F. Connelly JR.	PFC 00422	2925
7590 01/11/2006			EXAMINER	
JAMES RAY & ASSOCIATES			WEEKS, GLORIA R	
2640 Pitcairn Road			ART UNIT	
Monroeville, PA 15146			PAPER NUMBER	

3721

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/819,201

Applicant(s)

CONNELLY, PAUL F.

Examiner

Gloria R. Weeks

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Deike (USPN 3,735,822).

With respect to claims 14-17, Deike discloses a driver, the driver comprising: a body portion (61) in the form of a pipe having an elongated cavity; an impact member (63) welded to the body portion (61) adjacent an upper end thereof and disposed substantially normal to the elongated cavity, the impact member (63) having an upper surface and a radially opposed lower surface engageable with an upper end of an elongated object (64); the elongated cavity having a blind end within the body portion formed by the radially opposed lower surface of the impact member (63) and; and a pair of elongated handle (70) extending substantially parallel to the elongated cavity and spaced apart laterally from the elongated cavity.

Claim Rejections - 35 USC §103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

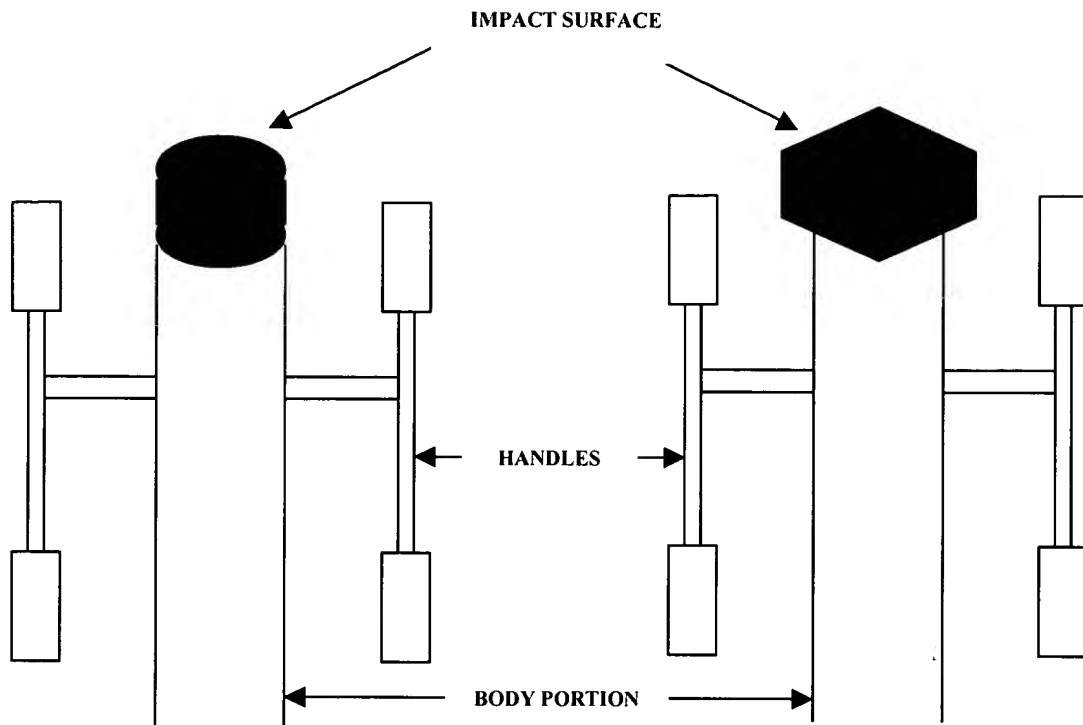
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3721

4. Claims 1-5, 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deike (USPN 3,735,822).

With respect to claims 1-5, 9 and 12, Deike discloses a driver, the driver comprising: a pipe body portion (61) having an elongated cavity; an impact member (63) welded to the body portion (61) adjacent an upper end (63) thereof and disposed substantially normal to the elongated cavity, the impact member (63) being generally circular shaped, and having an upper surface and a radially opposed lower surface (65 and perimeter of recess containing 65) engageable with an upper end (64) of an elongated object (62), the surface area of the impact member (63) is greater than the cross-section of the body portion (61); the elongated cavity having a blind end within the body portion formed by the radially opposed lower surface of the impact member (63); and at least one elongated handle (70) attached the body portion (61), the handle (70) having a hand grip (71) and extending substantially parallel to the elongated cavity (46) and spaced apart laterally (68) from the elongated cavity.

Deike discloses an impact member (63) having a circular shape, not a “rectangular” shape. It would have been obvious to one having ordinary skill in the art the time of the invention to modify the circular shape of the impact member to a rectangular shape, since applicant has not disclosed that such a shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a circular impact member, as such a surface would likewise serve as an adequate surface for impact (see illustration below).



5. Claims 6-8, 10 and 11 are rejected under U.S.C. 103(a) as being unpatentable over Deike (USPN 3,735,822).

With respect to claims 6-8, 10 and 11, Deike teaches a driver, having a body portion (61) welded to an impact member (63), and a pair of handles (70) with a transverse portion (68) welded to the body portion via two gussets (69) welded to the body portion (61). While Deike does not teach the two gussets being welded to both the body portion (61) and the impact member (63), It would have been obvious to one having ordinary skill in the art to locate the two gussets at the intersection of the body portion and the impact member, since it is has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. Furthermore, it appears the invention would work equally well if the two gussets are

Art Unit: 3721

located on the body portion or at the intersection of both the impact member and the body portion, as suggested by Applicant (page 9, lines 19-20) and disclosed by Deike.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deike (USPN 3,735,822) in view of Amicangelo (USPN 6,364,031).

Deike discloses a driver including a pipe body portion (61) but does not disclose the pipe (61) having a slot. Amicangelo teaches a driver (10) having a pipe body (40) and an impact member (42, 44), with a slot (46) in the pipe (40) and remote from the impact member (42, 44). It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the driver of Deike to include the slot of Amicangelo for the purpose of facilitating the removal of an elongated article that has been driven into the earth (Amicangelo-column 6, lines 33).

7. Claims 18-21 are rejected under 35 U.S.C. 103(a) as being obvious over Deike (USPN 3,735,822).

With respect to claims 18-21, Deike discloses a driver, having a body portion (61) welded to an impact member (63), and a pair of handles (70) with a transverse portion (68) welded to the body portion via two gussets (69) welded to the body portion (61) wherein the gussets serve to increase support of the connection of the handles with the body portion. Deike does not disclose the two gussets being welded to both the body portion (61) and the impact member (63). It would have been obvious to one having ordinary skill in the art to locate the two gussets at the intersection of the body portion and the impact member, since it is has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Art Unit: 3721

Furthermore, it appears the invention would work equally well if the two gussets are located on the body portion or at the intersection of both the impact member and the body portion.

Response to Arguments

8. Applicant's arguments, see pages 4-5, filed October 24, 2005, with respect to the rejection(s) of claim(s) 1-13 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Deike (USPN 3,735,822).

9. Applicant's arguments filed October 24, 2005 with respect to claims 14-21 have been fully considered but they are not persuasive.

Applicant's first argument is with respect to claims 14-17 and their rejection in view of Deike. Applicant argues the upper end of pipe (62) is contained within pipe (61), therefore preventing the upper end of pipe (62) from receiving impacts from a hammer. Applicant's claim language requires the upper surface of the impact member carried by a body portion to be positioned to receive impacts from a hammer, not that the upper surface of the elongated object be positioned to receive impacts from a hammer. While Deike discloses a dual concentric pipe apparatus, Examiner has identified the outermost pipe as the body (61) and the innermost pipe as the elongated object (62) received within the body (61) and subsequently driven towards a surface as a result of an impact received from the body (61). Deike is found to disclose the limitations of Applicant's invention as claimed.

None the less, should one interpret the innermost pipe as the body (62) and the fence post as the elongated object (FP) received within the body (62), one can reasonably argue that

Art Unit: 3721

hammering the surface (63) of pipe (61) will innately transmit a force to the upper surface (64) of pipe (62), thereby driving the object (FP) into a surface.

Applicant's arguments with respect to claims 18-21 are moot as they have been addressed by the above response.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 8:30 am - 7:00 pm Monday-Thursday.

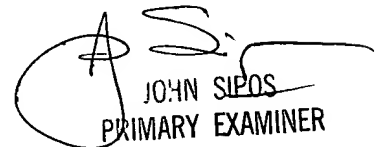
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.



grw
January 9, 2006

Gloria R Weeks
Examiner
Art Unit 3721



JOHN SIPOS
PRIMARY EXAMINER